Supreme Court, U.S.
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No. 94-1146

In The

Supreme Court of the United States

October Term, 1994

WILLIAM WALSH,

Petitioner,

v.

SOUTHWEST FLAGLER ASSOCIATES, INC.,

Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Third District

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PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Respondents' arguments only highlight why this Court should grant this petition. Respondents' Statement of the Case and Statement of the Facts were inaccurately presented to the Third District Court of Appeal and are continuing to do the same before this Honorable Court. It was these inaccurate statements that led the Appellate Court to affirm their opinion.

Mr. Lowe quotes citations to confirm that Petitioner's three questions were not properly preserved for appeal.

Understandably, Mr. Joseph Lowe, Counsel of Record, had to rely on the trial transcripts, and counsel's motions, to substantiate the facts, since Mr. Lowe was not at the trial. However, Petitioner recognizes several inaccuracies in Mr. Lowe's translation of the trial transcript and would like to make these known first, to this Court, before replying on Respondent's answers to the questions presented by the Petitioner in the Writ of Certiorari.

PETITIONER'S REBUTTAL TO
(Respondent's Statement of the Case)
Statement of the Facts)
(Opp. 2-6)

Mr. Lowe States, **Petitioner, represented by counsel, filed suit.....in October, 1990...* alleging negligence in a trip and fall accident..."****

After the Court affirmed their opinion, Petitioner

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* Mr. Lowe repeatedly makes statements, in which he claims to be facts, however, they are misrepresentations of the facts. The documented fact is, Petitioner pro se, filed this suit in October of 1990. There was no counsel involved. Through a motion filed by Mr. Lowe's lawfirm, this was quashed by the Court and in April, 1991, Petitioner, with counsel, filed Plaintiff's Amended Complaint. Mr. Lowe either neglected to look at the Court Records or Defendant's Motions in filing his Appellee's Answer Brief before the Third District Court of Appeal and his Respondent's Brief of Opposition with this Court. They are one and the same.

complained to the Florida Bar, however, the Florida Bar contends, **"There is no difference between a slip and fall and a trip and fall." (Case No. 95-70,034 (11P).**

Then Mr. Lowe says, **"In October, 1991, Walsh's counsel moved to withdraw and the motion was granted."*****

** Mr. Lowe then states, **"...alleging negligence in a trip and fall accident."** (Opp. 2). What a travesty of justice. If Mr. Lowe would have looked at the Complaint, Count I, 8. **"...when he was caused to slip and fall on ice cubes and/or water, and/or another foreign substance negligently left on the stairs..."** Defense counsel for the trial, Thomas Valerius, during his Opening Statement stated, **"Gentlemen, folks, let me tell you. No one is denying the man slipped and fell. The evidence will show a report was made by the nurse."** (TT 134). The report by the nurse stated, **"...slipped on a napkin and fell..."**

Finally defense counsel said, **"Mr. Ben Geller, eye witness, will tell you he saw this fella...slip and fall...I don't know belly whop or belly flop, but he saw him fall." (TT 140).** Mr. Geller stated in his deposition only, **"...he came down and wham, just like a belly-flop. That's what it was."** (Dep. 15). For the trial court to allow words from counsel like **"...belly whop..."** knowing that Mr. Geller is Italian. Mr. Geller and Mr. Valerius spoke in the hallway just before trial. Thomas Valerius found out before the trial that Ben Geller was Italian and used these words when referring to Mr. Geller's testimony.

***On September 9, 1991, Petitioner dismissed counsel.September10, 1991, counsel motioned to withdraw stating, **"Plaintiff, WILLIAM WALSH, has raised a dissatisfaction with counsel resulting in an irreconcilable conflict.** This resulted from Petitioner's counsel negligently allowing the Defendant to

During the trial there were two Corporate Representatives introduced, by defense counsel, Thomas Valerius. On the first day of the trial, Mr. Valerius introduced an imposter, Anthony Fuentas **(TT 82)**, and the second day, Mr. Armando Prats, the Corporate Representative **(TT 226)**, was there for the corporation. The trial court knew this deception, however, did nothing to correct it.

It's understandable why Mr. Valerius didn't want Armando Prats at the trial, even though Mr. Valerius knew that Petitioner subpoenaed Mr. Prats to be there the first day of the trial. Interrogatories were sent to the Defendant and answered by Armando Prats. In the interrogatories were questions concerning any eye witnesses. Each time the question was asked about **"...any eye witness..."** Mr. Prats would answer, **"None,"** or **"Unknown..."** During testimony, Mr. Prats was asked if he had received the interrogatories and had answered them. Mr. Prats responded, **"Yes!" (TT 237).** There were several more questions asked concerning this matter.

MR. WALSH: Did you look at this incident report when these interrogatories were sent to you?

MR. PRATS: Not really. **(TT 229).**

MR. WALSH: Did you know, did you inquire if there were

***conceal an eye witness that saw Plaintiff slip and fall and what caused the accident. This witness was concealed from June 1990, until found on May 11, 1991. Counsel kept repeating, **"No witness, no case."**

any eye witnesses?

MR. PRATS: No. **(TT 230).**

MR. WALSH: You never knew? You didn't care?

MR. PRATS: No, I didn't care. **(TT 230).**

MR. WALSH: It just wasn't important?

MR. PRATS: No! **(TT 231).**

Petitioner asked Mr. Prats if he had seen the incident report:

MR. WALSH: Have you ever looked at the incident report, Mr. Prats?

MR. PRATS: Yes. **(TT 237).**

MR. WALSH: When did you look at the incident report.

MR. PRATS: I received all the papers from the Plaintiff. I had to pull it out and look it up.

So Mr. Prats was lying to. The jury didn't care. They weren't allowed to see the difference. Petitioner had Mr. Prats on the stand about to testify that Thomas Valerius was lying when the Court stopped him.

MR. WALSH: Mr. Prats, you are the corporate representative? **(TT 226).**

MR. PRATS: Definitely. **(TT 226)**

MR. WALSH: How long have you been corporate representative during this case? **(TT 226)**

MR. VALERIUS: I object, Your Honor.

THE COURT: I think it is obvious too. The jury has been here the whole time. Let's get to another question, Mr. Walsh.

What other question would the Court want? Mr. Prats was about to expose this deception that Thomas Valerius had

been doing to this jury and the Court would not allow this to happen.

With the help of the maitre d's of the West Palm Beach and Miami areas, the eye witness, Ben Geller was found. Petitioner demanded that a deposition be taken of the registered nurse employed by the Defendant. This deposition was taken on July 31, 1991.*

As this Court reviews Mr. Prats remarks and knowing that the incident report has always had the name of Ben Geller as eye witness, this Court will understand why defense counsel, Thomas Valerius did not want Armando Prats at the trial and had to introduce an imposter as Corporate Representative. **(TT 82).**

MR. VALERIUS: The other question obviously, my organization. Mr. Fuentas, Anthony Fuentas, is the Corporate Representative. **(TT 82).**

MR. VALERIUS: He is not my client. He is the representative of the corporation. **(TT 82).**

When a lawyer makes a statement like this, something is wrong. Ben Geller explained what it was. Tony Fuentas

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* During the deposition of the registered nurse, an incident report was discovered. On the report, under the heading, Eye Witness #1, was written the name of Ben Geller and his telephone number. Counsel asked the nurse, **"How long has this name and number been on the report?"** The nurse answered, **"I wrote it on the report the night of the accident." (Dep. 15).**

could not be the corporate representative as he was terminated on December 26, 1989. **(TT 181). Mr. Geller began to get very agitated with the Court and Thomas Valerius. Mr. Geller was told to leave the courtroom or as the Court stated, "...anyone who by chance will be a witness."** However, Mr. Geller saw the Court allowing Tony Fuentas to sit through voir dire and opening statement, just because Thomas Valerius deceived the Court.

Petitioner motioned for a mistrial and this was denied by the Court. **(TT 209).** When Mr. Valerius heard this he began to change his story.

MR. VALERIUS: Your Honor, this is a corporation...Mr. Prats...the corporate representative could not afford three or four days in Court. They have assigned the most knowledgeable...Tony Fuentas. **(TT 101).** **

** Defense Counsel, Thomas Valerius, had Tony Fuentas come to his office before the trial began on the first morning.

MR. VALERIUS: And did you come to my office yesterday morning?

MR. FUENTAS: Yes, I did. **(TT 193)**

MR. VALERIUS: And did we talk about, do you remember William Walsh?

MR. FUENTAS: Yes, we did, sir. **(TT 194).**

MR. VALERIUS: Did you tell me you didn't remember William Walsh from Adam's house cat?

MR. FUENTAS: Yes, I did. **(TT 194)**

MR. VALERIUS: Did you tell me you didn't remember anything about this fall?

MR. FUENTAS: I certainly told you that. **(TT 194).**

Then, Thomas Valerius, realized that the direction he was heading had no foundation of truth. He changed his story once again.

MR. VALERIUS: Isn't it a fact that the reason you sat over there is because I told you, come sit over here, Tony?

MR. FUENTAS: Yes, you did, sir. **(TT 195).**

MR. VALERIUS: I just asked, are you available, if in fact I had to make a decision who is to sit next to me?

MR. FUENTAS: I would be. **(TT 195.**

MR. VALERIUS: You were just listening to this lawyer who said, sit down here, Tony?

MR. FUENTAS: That's right, sir. **(TT 196).**

The trial court had gotten involved earlier, however, did nothing to stop this deception.

THE COURT: I don't believe the representative can be a non-employee sitting at counsel's table. **(TT 102).**

The trial court did nothing to remove the imposter from sitting at counsel's table, even though the Court ruled as it did.

MR. WALSH: Why did we go to trial if there wasn't a representative for the Defendant sitting at that table? **(TT 208).**

THE COURT: The Defendant is not required to have a representative if it doesn't choose to one. **(TT 208).**

How can this Court say something like this when this Court has heard all the lies, deceptions and misrepresentations by defense counsel, Thomas Valerius. Yet, a better question, how did the Third District Court of

Appeal affirm their opinion after reading an appeal such as this? Where is it said, **"...and Justice for all?"**

Throughout the entire trial transcript Defendant's employee's or former employee's misrepresented the truth. They knew they were doing this, defense counsel, Thomas Valerius knew this and the Court knew this. Petitioner only wants someone to read this entire trial transcript. Just because someone has the title of lawyer or Judge doesn't mean that something like this can't happen. Petitioner's reply has to prove this. Everything Petitioner states is recorded in these trial transcripts.

Thomas Valerius had Tony Fuentas state that he was working the night in question, however, Petitioner found out that he wasn't. This is why he knew nothing about **"...William Walsh,"** or **"...the accident."** The nurse stated that she only talked to Tony Fuentas and he pointed out the man that **:...slipped and fell." (TT 424).** Tony Fuentas stated, **"...I never talked to her." (TT 221).** Tony Fuentas stated, **"My assistant told me about the accident at 10:15, 10:30." (TT 222).** His assistant wasn't even working the night in question." **(Int. May 20, 1991).**

Everything can't be blamed on Mr. Valerius. Mr. Lowe, handling the appeal and now this writ, is just as bad. He either quotes a portion of the trial transcript or misquotes all of it.

In his Statement of the Facts, he says, **"Walsh himself admitted that what caused me to fall, I do not know."** This is a true statement, however, not a complete

statement. The trial transcript also reads, **"I said I can't tell you, it could have been ice, ice water, butter, or even a napkin." (TT 673).**

The incident report written by the nurse states, **"...slipped on a napkin and fell."**

The eye witness, Mr. Ben Geller said, **"...two waiters collided, spilling food and drinks to the steps...where Mr. Walsh fell." (TT 330).**

Then Mr. Valerius stated, **"Could have been nothing." (TT 637).**

Mr. Lowe says, **"He conceded that it was possible that he tripped over his own feet."* (TT 673). (Opp. 3).** What a travesty of justice. Mr. Lowe makes a statement and whether it is true or not wants this Court to believe it to be fact.

Mr. Lowe, tells this Court, **"Walsh, a pro se litigant, totally ignorant of the Rule of Evidence..." (Opp. 9).**

If these rules say that someone is allowed to deceive

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* Petitioner is being cross examined by defense counsel, Thomas Valerius:

MR. VALERIUS: Mr. Walsh, do you sincerely, you don't know what you slipped on...**(TT 673).**

MR. WALSH: It's possible, I don't know...**(TT 673).**

MR. VALERIUS: You could have tripped over your own feet?

MR. WALSH: I didn't trip over my own feet. I know I didn't trip over my own feet. **(TT 673)**

and misrepresent the facts, then Mr. Lowe is right. However, as I have pointed out to this Court, Mr. Lowe either makes a statement without making sure it is true or doesn't care if it is true and says it anyway. Mr. Lowe is right about one thing, I am a pro se litigant, not of my choosing, but I am anyway, and I don't know that much about the law. I relied on the trial court to make sure I received a fair trial. I lost out there. I relied on the Third District Court of Appeal to see that justice prevailed and I lost there too. I am relying on this Court to make sure every Constitutional Right that I have is not wavered and that as the 14th Amendment says, **"...due process of the law and equal protection of the law."** This is why this Writ of Certiorari must be granted.

Mr. Lowe mentiones that Ben Geller was in the dining room on Saturday evening, November 18, 1989. **(Opp. 3).** Mr. Geller testified as did Tony Fuentas, **"They only come on Saturday night."**

Mr. Lowe states, **"He was the only witness who testified about two waiters colliding."*** **(Opp. 3).** Who knows if this was the only witness. Could the Defendant be concealing more? He concealed Mr. Geller for almost a year.

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* Armando Prats was asked, **"...is nurse Riley required to take statements of any eye witnesses? (TT 235).** Mr. Prats answered, **"If there is any, yes. (TT 235).**

Nurse Riley was asked, **"...did you inquire of anyone in the dining room whether they had witnessed Mr. Walsh's fall?"** Riley said, **"No! (Dep 15**

Mr. Lowes states, **"Geller admitted that he didn't inspect the area..."** Mr. Lowe fails to report to this Court that the interrogatories that Armando Prats was asked and answered, **"Did any person known to the Defendant inspect the area where the Plaintiff was injured after the Plaintiff's accident."** Mr. Prats answered the question, **"None." (Int. 15).** The Defendant's employees didn't even inspect the area. Mr. Geller was an invitee and this was not his responsibility.

Again, Mr. Lowe tries to mislead this Court when he refers to **"Disputed medical testimony..."** (Opp. 3).**

** This is the statement that was given during direct examination. On cross examination the doctor gave Petitioner another statement.

MR. WALSH: Dr. Kalbac, did you see the x-rays taken on January 31, 1990?

DR. KALBAC: No, all I have are the reports. I have no x-rays, just reports. **(TT 528)**

MR. WALSH: What did the report state on January 31, 1990.

DR. KALBAC: Sprained knee with patello femoral contusion. **(TT 528).**

MR. WALSH: If your colleague told you that on January 31, 1990, the x-ray showed a normal knee, no arhtritis, and now, some thirty-two months later you take an x-ray and see degenerative arthritis. Would that mean that some happened between November, 1989, and the time that you took another x-ray and said there is arthritis? **(TT 528).**

DR. KALBAC: Yes. **(TT 529).**

DR. KALBAC: I said I saw minimum arthritis. **(TT 519)**

MR VALERIUS: In other words, the first stage, is that right?

DR. KALBAC: Yes. **(TT 520).**

Mr. Lowe states that Dr. Joseph Kalbac, I.M.E. hired by the Defendant, testified that Walsh had a strained knee as a result of the accident. **"The authroscopic surgery...was a result of a long term arthritic degenerative condition."** This doctor only had access to the report. The reports stated, **"...sprained knee with petello femoral contusion."** Dr Thomas Brodrick who was the orthropedic surgeon who did the authroscopy stated, **"...patello femoral contusion is taking a lick or hit on the knee, driving the knee-cap up against the femur."**

A video deposition was taken of Dr. Thomas Brodrick, M.D. Orthopedic surgeon. During the viewing of the video the trial judge and defense counsel, Thomas Valerius left the courtroom. The Court told the jury, **"I'm right next door if I'm needed for anything."** The Judge might as well told the jury, **"The video isn't important so I'm not staying."** The judge should have stayed there anyway. There were some questions come up that the Court couldn't rule on.

THE COURT: Did Dr. Brodrick relate to the arthroscopy during his testimony? **(TT 646).**

THE COURT: I guess I need to look at the Dr. Brodrick deposition, because I didn't sit through it. **(TT 646).**

Finally, Mr. Lowe says, **"Walsh attempted to relate...a surgical procedure to his abdominal area...to the accident. The trial court refused to permit the doctor to testify because the doctor stated that she could not testify within reasonable degree of medical probability that the accident at issue was causually related to the surgery..."**

DR. GAHTAN: I was told not to make cause effect...**(TT 50**
THE COURT: Then, Mr. Walsh, you just call her to the witness stand and ask her the questions...**(TT 49).**
MR. VALERIUS: That begins a precarious problem. I didn't know you were going to get this witness under the authority of the VA. She comes here as a records custodian. However, she has been told by her administrator, she is not entitled to give opinions. She is willing to tell us everything as a records custodian. **(TT 50).**

The doctor said that she had a letter from the VA. **(TT 53),** however, we all have that same letter. The trial court, defense counsel, Thomas Valerius, Dr. Gahtan and the Petitioner all received the same letter from Richard A. Silver, Director of the James A. Haley VA Hospital, Tampa Florida. This letter states, **"The Department of Veterans Affairs has not asserted an interest in this case and for which Dr. Vivian Gahtan will function as a private practioner."** The letter further states, **"...for this litigation, Dr. Gahtan will function as a private physician if required to respond to this subpoena."** There was no other letter except for the one that was made up in the minds of the doctor and defense counsel, Thomas Valerius. This doctor was never told by the VA not to testify. She said during her deposition, **"My attorney told me not to give opinions or causation."**

The Court knew that this doctor couldn't answer this subpoena, but also had read the letter from the VA. **(TT 8).**
THE COURT: Here is the problem we have Mr. Walsh. She is an employee of the federal government. Generally

speaking, federal government employers take the position that their employees are not bound to respond to subpoenas in a State Court. **(TT 51).**

Once Mr. Valerius became aware that the Court was going to allow this doctor to testify, everything for the sake of wrong was done.

THE COURT: You have to talk about whether you want fact or expert opinion. **(TT 55).**

MR. WALSH: All I am asking is that she answer that I was in the hospital during that time and she operated on me and nothing else. **(TT 55).**

THE COURT: Then we all seem to be - - **(TT 55).**

MR. VALERIUS: No, I stand out from that croud for a moment. In fairness to you, Judge, **surgery was done a year and six months after the fall.** So my point is it is not even timely connected. **(TT 56).**

Mr. Valerius knew that if this doctor testified that she and her hospital records would prove causation. Mr. Valerius knew these records stated:

SUMMARY OF PERTINENT DIAGNOSIS: Patient reports falling at the racetrack causing his initial hernia. This was written on 4/08/91, one day before the surgery. This was agreed to by Dr. Murphy, Dr. Gahtan, Dr. Tannenbaum and their supervisor, Dr. Rand. Surgery was scheduled and performed the next day, 4?09/91, by Vivian Gahtan, M.D.

HOSPITAL COURSE: Patient was admitted and was seen by indoctrinal to be placed on a study by Dr. Rand. His preoperative evaluation was found to be within the normal

limits, as the patient reports falling at the racetrack causing his initial hernia. The patient was taken to surgery where he underwent an incisional herniography with marlex mesh. See Operative reports for details. This was signed by Dr. Rand and Dr. Tannenbaum.

OPERATIVE REPORT: Surgeon: Dr. Vivian Gahtan. First assistant: Dr. Phillip A. Anderson. Major operation diagnosis: Patient had done well until patient fell on his abdomen and **later evolved ventral hernias with multiple defects or at least forcible defects in facia.** The patient has been informed of the risks of infection especially from the marlex mesh and the likely need for the mesh. He has also been informed of the risk of hemorrhage and recurrence. This was signed by Vivian Gahtan, M.D., surgeon.

PROGRESS REPORT: Dated 5/31/91. Marlex mesh prolene has entered the abdomen. Told patient it cannot be removed. Should not be any risk. This was signed by Vivian Gahtan.

PROGRESS REPORT: Dated 7/08/91. General surgery Clinic. Patient having light blood come out. Evidence of hernia recurrence. This was signed by Vivian Gahtan.

The entire surgical team agreed the causation was the fall at the racetrack. Dr. Gahtan had no restrictions except for what was placed on her by Thomas Valerius. Yes, he had a **"...precarious problem," (TT 50),** and he was going to do everything possible not to have this doctor testify.

Under the 14th Amendment and every other Amendment of the Constitution of the United States, the trial

court deprived the Petitioner of life, liberty or property, without due process of the law and the equal protection of the law.

28 U.S.C. § 1257 is why this Writ should be granted. Mr. Lowe says that Petitioner's constitutional claims are entirely without merit and were not preserved for appeal. This reply brief proves the merit of Petitioner's claim, however, this Court can go beyond this scope and grant this writ.

There were three questions presented to this Court, however, Mr. Lowe only wants to talk about two. Petitioner did bring these questions before the Third District Court of Appeal, the highest Court the Petitioner was allowed to appeal to because of the affirmed opinion. The page numberts are as follows:

Question #1: **(Int. Br. 5, 6, 16, 17). (Rep. Br. 5, 6, 16, 17)**

Question # 2: **(Int. Br. 5, 13, 14, 15, 16).**

Question #3: **(Int. Br. 19,20). (Rep. Br. 16, 17).**

Mr. Lowe must not have read the Initial Brief or the Reply Brief of the Petitioner, or believes this Court will accept something just because he says it is true.

Mr. Lowe states that **"...defense made reference to the procedure to rebut Petitioner's lost wages claim." Defense counsel, Thomas Valerius said during opening statement,** "The evidence would show he underwent other surgeries unrelated to this accident, unrelated. No doctor is going to come in and say they are related and he was out of work for those problems. **(TT 140)**

Petitioner made quotes from the trial transcript, pages

270, defense counsel was cross examining Ken Grimes. Each time defense counsel asked about whether Mr. Grimes knew that I had missed work because of the stomach operation, Mr. Grimes said, no. The trial court and Thomas Valerius ordered the Petitioner that he was not allowed to talk about the stomach operation.

MR. VALERIUS: Judge, I hear you saying things and you and I as men who practice law, you being a Judge, mean certain things to you and I. Bill, do you understand, you cannot report to the jury that your stomach was injured and you needed that surgery as a result of the fall? **(TT 471).**

THE COURT: Not lumps in your stomach. The only thing you can talk about is the time lost from work because of the stomach problems. **(TT 471).**

THE COURT: You are not going to talk about the mesh and all of the details of the surgery. You can't attribute the stomach problems to the fall. You follow?

The trial court had warned me earlier about the rules of Court:

THE COURT: Well, Mr. Walsh, again this is another of the compendium of problems that you are going to have because you are trying this case yourself rather than through a lawyer. I guess I relied on the trial judge to make sure that I received a fair and non-prejudicial trial.

Mr. Lowe's last quote really is what this is all about. **"Any Error was Harmless."** There is no errors in lies, misrepresentations or deceptions. These are the reasons that Petitioner lost the case and has lost everything. This is not

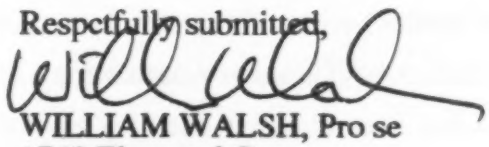
what our country is all about. This is not one of those cases where someone is trying to bring attention to a cause. This is a real case with real lies, misrepresentations and deceptions. A case where the Plaintiff never had a chance because of the trial court. Thomas Valerius may have been the mastermind to this deception, but the trial court allowed them.

God help our country if things like this is allowed to go on without being investigated. Thank you.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be granted.

Respctfully submitted,



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